

(i) It is in response to a written request by a farmer, rancher or political subdivision for construction of a well under Pub. L. 95-51.

(ii) The applicant is located within an area which has been determined by the Secretary of the Army to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, the well could not be constructed by a private business within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells. Federally-owned well drilling equipment can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering increased hardships from the effects of an inadequate water supply. Use of equipment owned by non-Federal interests would only be appropriate in the unusual circumstance when both of the above conditions can be met.

(e) *Guidance—transport of water.* (1) Assistance to an applicant in the transportation of water may be provided only if:

(i) It is in response to a written request by a farmer, rancher or political subdivision for transportation of water under Pub. L. 95-51.

(ii) The applicant is located within an area which has been determined by the Secretary of the Army to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human and livestock consumption and water cannot be obtained by the applicant.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human and livestock consumption. It will not be provided in connection with water needed for irrigation, recreation or other non-life supporting purposes.

(4) Corps assistance will not include the purchase of water nor the cost of loading or discharging the water into or from Government conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water.

(f) *Request for assistance.* Written request must be made to the district commander or division commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified and coordination in accordance with §203.52(b) of this section will continue as appropriate throughout the assistance.

Subpart F—Advance Measures

§203.61 Policy.

“Advance Measures” consists of those activities performed prior to flooding or flood fight to protect against loss of life and damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an immediate threat of unusual flooding. Corps assistance will be to complement

the maximum efforts of State and local authorities. Projects will be designed for the specific threat, will normally be expedient type construction and temporary in nature.

§ 203.62 Eligibility criteria.

(a) *Threat of flooding.* There must be an immediate threat of *unusual* flooding before advance measures can be considered. The threat may be established by National Weather Service predictions or by Corps of Engineers determinations of unusual flooding from adverse conditions. The threat must be defined to the extent that it is clearly apparent that damages will be incurred if preventive action is not taken immediately.

(b) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with respect to the emergency situation is required. The Bureau of Indian Affairs may request assistance for Indian tribal lands. All requests should identify the following information.

(1) Describe the local and State efforts undertaken. Verify that all available resources have been committed.

(2) Identify the specific needs of the State and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the State.

(4) Identify the project sponsor.

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively with the specific threat, and capable of construction in time to prevent damages.

(d) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.

(e) *Local cooperation/responsibilities.* In addition to requirements of subpart H, temporary works constructed by the Corps must be removed by the project sponsor when the operation is over, at no cost to the Corps.

Subpart G—Local Interests Cooperation and Participation

§ 203.81 General.

(a) *Requirements for cooperation and participation.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to a natural disaster, division or district commanders should negotiate a local cooperation agreement with local interests whenever assistance is furnished. Non-Federal interests or local interests may be public entities, organizations, or groups. For assistance to other than a public entity, it is required that there be a public agency to sponsor the project and cosign the agreement. Project sponsors must be one of the following:

(1) Legal subdivision of a state or a state government.

(2) Local unit of government.

(3) Qualified Indian tribe or tribal organization.

(4) State chartered organization, such as a levee board.

Agreements do not require approval by HQUSACE unless they contain special or unusual conditions of local cooperation and participation.

(b) *Request for assistance.* For urgent situations, district/division commanders may respond to oral request from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Before furnishing assistance under Advance Measures, or under Clean Drinking Water the district/division commander must obtain a statement, signed by the Governor, stating that the State is aware of the request, identifying the problem verifying that all available State and local resources have been committed and requesting Federal assistance. For Emergency Operations, the statement may be signed by an authorized State official and assistance can be furnished before the statement is received. On Indian tribal lands the Bureau of Indian Affairs may make requests in lieu of the Governor or other State official.

[48 FR 56373, Dec. 21, 1983, as amended at 51 FR 25691, July 16, 1986]